



## OPERATIONAL MEMO

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<b>TITLE:</b>	<b>STAFF SAFETY AND DISCLOSURE OF PROTECTED HEALTH INFORMATION</b>
<b>SUPERSEDES NUMBER:</b>	N/A
<b>EFFECTIVE DATE:</b>	<b>APRIL 24, 2023</b>
<b>DIVISION AND OFFICE:</b>	<b>COMMUNICATIONS AND GOVERNMENT RELATIONS &amp; LEGAL; POLICY, COMMUNICATIONS AND ADMINISTRATION OFFICE</b>
<b>PROGRAM AREA:</b>	<b>COUNTY RELATIONS AND ADMINISTRATION; PRIVACY</b>
<b>KEY WORDS:</b>	<b>LAW ENFORCEMENT, POLICE, PROTECTED HEALTH INFORMATION, PHI, HIPAA, SAFETY, SECURITY, STAFF</b>
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<b>APPROVED BY: JOSHUA MONTOYA</b>	

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### **Purpose and Audience:**

The purpose of this memo is for the Department of Health Care Policy and Financing (the Department) to provide sub-regulatory guidance for eligibility sites (county departments of human/social services and Medical Assistance and Eligibility Application Partner Sites) regarding the disclosure of confidential information, including protected health information, in specific safety-related situations.

The Department of Health Care Policy and Financing (the Department or HCPF) is statutorily responsible for the oversight of the operations of the county department particular to the administration of the Medical Assistance Program.

### **Information:**

Definitions:

**Criminal threat** occurs when a person threatens to kill or physically harm someone and that person is thereby placed in sustained fear for his/her safety or for the safety of his/her immediate family. The threat must be communicated, specific and unequivocal.

**Eligibility Site** is defined in 10 CCR 2505-10 8.100 as a location outside of the Department that has been deemed by the Department as eligible to accept applications and/or determine eligibility for applicants. This includes county departments of human/social services (counties), Medical Assistance (MA) Sites and Eligibility Application Partner (EAP) Sites.

**HIPAA:** Health Insurance Portability and Accountability Act of 1996.

**Internal Control** is a process affected by an entity's board of directors, management, and other personnel that is designed to provide reasonable assurance regarding the achievement of objectives in the following categories: a) reliability of financial reporting, b) effectiveness and efficiency of operations, and c) compliance with applicable laws and regulations.

**Law Enforcement** describes the agencies and employees responsible for enforcing laws, maintaining public order, and managing public safety. The primary duties of law enforcement include the investigation, apprehension, and detention of individuals suspected of criminal offenses.

**Perpetrator** a person who carries out a harmful or illegal act.

**Protected Health Information (PHI)** is any health information that could allow an individual to be identified. PHI includes information created, received or maintained by the Counties that relates to the past, present, or future physical or mental health, or condition, or treatment of an individual, or the payment for health care to an individual, and that identifies the individual or can be used to identify the individual.

**Victim of crime** a person that has suffered a direct physical, emotional or pecuniary harm as a result of the commission of a crime.

Background:

Staff safety is of the utmost importance to the Department. If an applicant, member or other individual of the community makes a threat of harm to an eligibility site staff member, eligibility sites are encouraged to act on the threat as appropriate based on the site's safety internal controls.

If the eligibility site feels the threat of harm is a criminal threat, the eligibility site may consider contacting law enforcement to file a complaint. This memo is to provide

eligibility sites with guidance on what confidential information can be shared while working with law enforcement due to threats made towards an eligibility worker, other eligibility site staff, or eligibility site locations.

Allowed Disclosure:

HIPAA allows a covered entity's staff to disclose limited protected health information to law enforcement about the suspected perpetrator, when their staff are victims of crime. See 45 C.F.R. § 164.502(j)(2). County department of human/social service staff who are engaged in medical assistance eligibility work are acting as agents of HCPF, the covered entity. Specifically, the disclosure to law enforcement is for the purpose of identifying or locating a suspected perpetrator of the above-mentioned crime.

Disclosure of protected health information (PHI) must be limited to information about the suspected perpetrator of a criminal act as listed in 45 C.F.R. § 164.512(f)(2).

- Name and address
- Date and place of birth
- Social Security Number
- ABO blood type and rh factor
- Type of injury
- Date and time of treatment
- Date and time of death, if applicable
- Distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Compliance and Oversight:

The Department staff responsible for eligibility site oversight activities may conduct a review any complaints of breach of confidentiality received by the Department. Findings of non-compliance may result in the issuance of a Management Decision Letter (MDL). The MDL acts as a non-compliance notice and will require the eligibility site to address the root cause of non-compliance and correct internal procedures to prevent future non-compliance. If an eligibility site is selected for a Desk Review of potential breach of confidentiality, the site will be notified prior to the completion of the review.

**Attachment(s):**

None

**Department Contact:**

For questions from eligibility sites regarding this Operational Memo, please complete a County Relations Request (<https://hcpfdev.secure.force.com/HCPFCountyRelations>). Please select Ticket Type "County Oversight."